

CHAPTER 19.
FAMILY LAW DEPARTMENT PROCEDURES AND POLICIES

RULE 19.00**RULES AND MANUAL OF POLICIES AND PROCEDURES**

The California Rules of Court, Local Rules and the San Luis Obispo County Family Law Section Manual of Policies and Procedures are intended to provide uniformity in the practice and procedures among the departments hearing family law matters in San Luis Obispo County. Attorneys and unrepresented litigants (also known as pro pers) should familiarize themselves and comply with the guidelines set forth in this material.

A copy of the San Luis Obispo Family Law Section Manual of Policies and Procedures is available at the Clerk's Office for review as well as the court's website at www.slocourts.net. The Clerk's Office is located at 1035 Palm Street, San Luis Obispo, California. The Manual of Policies and Procedures provides detailed information on suggested approaches to substantive issues as well as the structure, calendaring, and resolution of family law matters. (Amended Effective 7/1/2001)

RULE 19.01**COURT LOCATION**

The Family Law Department is located on the third floor of the County Government Center at 1035 Palm Street, San Luis Obispo, California. The calendar may be called in any department on assigned dates. Counsel and self-represented litigants should check with the Clerk's Office to ascertain the department hearing family law assignments on a given date. (Amended Effective 7/1/2001)

RULE 19.02**PROOF OF SERVICE**

Proof of service should be filed prior to hearing with the clerk's office. If a responding party fails to appear at a hearing, the moving party must immediately submit proof of timely service to the court; otherwise, the matter will be taken off calendar. The matter may be dropped from calendar for failure to timely file proof of service.

RULE 19.03**USE OF JUDICIAL COUNCIL FORMS AND DOUBLE SPACING REQUIREMENT**

All documents filed for matters pending in the Family Law Department must be on forms prescribed or provided by the Judicial Council. All other documents must be typed and double spaced. Any handwritten documents must be retyped and double spaced. Documents include, but are not limited to, declarations and points and authorities. (Amended Effective 7/1/2001)

RULE 19.04**ALTERNATIVE DISPUTE RESOLUTION**

Each party to a family law action must be informed that Alternative Dispute Resolution (ADR) is an option to litigation. Notice must be in the form of an information sheet "Alternative Dispute Resolution in Domestic Relations Cases", which is available in the clerk's office. Notice must be served at the time the first documents served on a party and the proof of service must be filed. The Petitioner/Plaintiff must review the information prior to service on the Respondent/Defendant. Notice of the information does not need to be served on an employee pension benefit plan. (Amended Effective 7/1/2001)

RULE 19.05**CUSTODY EVALUATIONS**

(a) The Superior Court of the County of San Luis Obispo adopts this rule pursuant to California Rules of Court 1257.3. This rule may be modified by the Superior Court and published pursuant to Rules of Court.

(b) In all cases, prior to or concurrent with the signing of an order under this section, the parties will be informed that Alternative Dispute Resolution (ADR) is an option to litigation.

(c) A peremptory challenge of a court appointed evaluator who is employed by Family Court Services is not allowed. However, if a private evaluator is appointed and one of the parties wants to challenge the appointment, they must make the challenge at the earliest opportunity. If the appointment is made in open court, any challenge must be made at that time. The challenge may be made in a responsive declaration to an application for such an order. The parties or the court may request that an objection may be made in a letter to the Court within seven calendar days. One peremptory challenge is allowed per party (using the standards of CCP 170.6); challenges for cause are not limited.

(d) Any evaluator appointed, whether a court employee or private evaluator may petition the court to withdraw from the case for cause, which may include, but is not necessarily limited to

conflict of interest, time constraints or health reasons. An evaluator should expect to complete the evaluation within ninety days, assuming cooperation from the parties.

(e) Any complaints regarding a private evaluator's performance must be presented to the presiding Family Law judge who will refer the complaint to a committee which must consist of one judicial officer appointed by the Family Law presiding judge, one member of the county Family Law Section appointed by the President of the Family Law Bar Section, and the supervisor of Family Court Services, hereinafter known as the "Committee". The committee members will serve for one calendar year commencing on January 1st of each year. These complaints and the entire review process must be strictly confidential.

(f) **Ex-parte communications:** No one must communicate with the evaluator except in written form except to schedule an appointment and during a scheduled appointment. The evaluator must have all written communications available for review at a deposition or at trial.

(g) Prior to the commencement of the evaluation, the evaluator must be provided a copy of the court order which specifies the specific code section wherein the evaluator is appointed, e.g., (1) Evidence Code §730, (2) Family Code §3111, or (3) Code of Civil Procedure §2032.

(h) Evaluations may include psychological and other testing, or may be only a custody analysis without testing. Limited evaluations to specific issues may be ordered, and if so, the evaluator must restrict review to the terms of the order. If the evaluation is performed by a psychologist and is pre-judgment, the presumption is that it will include psychological testing and the collection of all available information for a full evaluation. If the evaluation is post-judgment, the presumption is that it will not include psychological testing and is confined to limited issues. If the evaluator believes more information is necessary, a request should be made to the judicial officer who signed the order for the evaluation. This request should be in letter form to the judicial officer and to the parties and counsel.

Specific scope and purpose of the evaluation must include if requested:

- (1) Individual or joint interviews with the parties and/or their children;
- (2) with extended family;
- (3) Home and school visits;
- (4) Consideration of information from health/mental health professionals;
- (5) Consideration of information from school professionals;
- (6) Psychological/educational testing of the parties and/or their child(ren) and/or significant others who are clearly defined.
- (7) That this evaluation is limited in duration and ends when the report is lodged/filed;
- (8) Whether this evaluation is limited to specific issues the court wishes to consider;
- (9) Whether domestic violence or drug and alcohol issues should be evaluated.

(i) Child custody evaluators who accept appointments from the court are expected to strictly adhere to requirements of this rule. The term of appointment ends when their report is filed, except for court testimony. If there is a need for an "update" there must be a new order issued to define the terms of the update.

(j) The court order must allocate, or reserve allocation, of any fees and costs for the evaluation. Unless otherwise stated, the evaluator is responsible for collecting payment directly from the parties.

(k) The child custody evaluator must:

- (1) Consider the health, safety, welfare, and best interest of the child within the scope and purpose of the evaluation as defined by the court order;
- (2) Strive to minimize the potential for psychological trauma to children during the evaluation process; and

(3) Include in the initial meeting with each child an age appropriate explanation of the evaluation process, including limitations on the confidentiality of the process. The parents, guardian and/or the attorney for the minor(s) must be provided with the guidelines of confidentiality regarding information given to and from the minor(s). These guidelines must be prepared by the Committee and provided to the evaluators in written form to use as a handout.

(4) Prior to the preparation of the written report, the evaluator must meet conjointly with the parties to generally review the findings of the evaluator in an attempt to settle the case. Each party must be given an opportunity to discuss and rebut allegations made during the course of the evaluation. If a conjoint meeting is contraindicated, the evaluator must have a conjoint meeting with the attorneys, which may be telephonic, or if the parties are self-represented, individual meetings.

(l) All evaluators who are appointed by the court for child custody evaluations pursuant to this rule, must meet the qualifications, training, and continuing education requirements specified under Family Code Sections 185, 186, and 3111, and Rule 1257.57 or other such codes that may apply. The evaluator has the ongoing responsibility for informing the court that they have met the requirements of continuing education. Those requirements will be reviewed by the Committee aforementioned. The information must be provided to the court annually by the evaluator to maintain eligibility on the court approved list of evaluators.

(m) The requirements in performing an evaluation are that the child custody evaluator must provide:

- (1) A written explanation of the process that clearly describes the:
 - (a) Purpose of the evaluation;
 - (b) Procedures used and the time required to gather and assess information and which specific psychological tests will be used, the role of the results in conforming or questioning other information or previous conclusion;
 - (c) Scope and distribution of the evaluation report;
 - (d) Limitations on the confidentiality of the process; and
 - (e) Cost and payment responsibility for the evaluation.
- (2) Data collection and analysis that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process may include but is not limited to:
 - (a) Reviewing pertinent documents related to custody, including law enforcement records;
 - (b) Observing parent-child interaction (unless contraindicated to protect the best interest of the child); if this interaction is prohibited by a court the order of appointment must so state, if the interaction is contraindicated by the evaluator, he/she must inform the parties to allow a reasonable time to amend or clarify the court order.
 - (c) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:
 - (1) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;
 - (2) History of involvement in caring for the child;
 - (3) Methods for working toward resolution of the child custody conflict;
 - (4) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and
 - (5) Psychological and social functioning;
 - (d) Conducting age-appropriate interviews and observation with the children, both parents, stepparents, significant others, step and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated, as set forth above, to protect the best interest of the child;
 - (e) Collecting relevant corroborating information or documents as permitted by law;
 - (f) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise, e.g., learning disabilities, IEP, ADD, ADHD, mental illness, severe physical disability and other special needs.
- (3) A written and/or oral presentation of findings that is consistent with Family Code Section 3111 or Evidence Code Section 730. In any presentation of findings, the evaluator must:
 - (a) Summarize the data-gathering procedures, information sources, and times spent, and present all relevant information, including information that does not support the conclusions reached;
 - (b) Describe any limitations in the evaluation that result from unobtainable information, whether there was failure or inability of a party to cooperate, or the circumstances of particular interviews;
 - (c) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and
 - (d) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child(ren), if the evaluator is ordered to make nay recommendations to the court regarding a parenting plan. Recommendations must include consideration for any changes that may occur with reasonable foreseeability.
- (4)[Cooperation with professionals in another jurisdiction] When one party resides in another jurisdiction, the custody evaluator may rely on another qualified neutral professional for assistance in gathering information. In order to ensure a thorough and comparably reliable out-of-jurisdiction evaluation, the evaluator must:
 - (a) Make a written request that includes, as appropriate:
 - (1) A copy of all relevant court orders;
 - (2) An outline of issues to be explored;
 - (3) A list of the individuals who must or may be contacted;
 - (4) A description of the necessary structure and setting for interviews;
 - (5) A statement as to whether a home visit is required;

(6) A request for relevant documents such as policy records, school reports, or other document review; and

(7) A request that a written report be returned only to the evaluator and that no copies of the report be distributed to parties or attorneys;

(b) Provide instructions that limit the out-of-jurisdiction report to factual matters and behavioral observations rather than recommendations regarding the overall custody plan;

(c) Attach and discuss the report provided by the professional in another jurisdiction in the evaluator's final report.

(n) In performing an evaluation, the child custody evaluator must:

(1) Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

(2) Protect the confidentiality of the parties and children in collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

(3) Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;

(4) Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;

(5) Strive to maintain the confidential relationship between the child or party who is the subject of an evaluation and his or her treating psychotherapist;

(6) Operate within the limits of the evaluator's training and experience and disclose any limitations or bias that would affect the evaluator's ability to conduct the evaluation;

(7) Not pressure children to state a custodial preference;

(8) Inform the parties of the evaluator's reporting requirements, including, but not limited to, suspected child abuse, domestic violence and neglect and threats to harm oneself or another person;

(9) Not disclose any recommendations to the parties, their attorneys, or the attorney of the child before having gathered the information necessary to support the conclusion;

(10) Disclose to the court, parties, attorney for a party, and attorney for the child conflicts of interest or dual relationships, and not accept any appointment except by court order or the parties' stipulation; and

(11) Be sensitive to the socioeconomic, gender, race, ethnicity, cultural values, religious, family structures, and developmental characteristics of the parties. (Amended Effective 7/1/2002)

RULE 19.06

FAMILY CODE 3111 EVALUATION

If the evaluation is pursuant to FC 3111, the evaluator must submit a written CONFIDENTIAL report on his or her evaluation at least ten (10) days before the hearing regarding custody of the child. The report must be lodged/filed with the clerk of the court as a Confidential Document, in the court file in which the custody hearing is set for hearing and served on the attorneys for the parties or to the parties if they are self-represented. The Court's policy, is that the parties and counsel should exercise restraint and caution in disseminating this information to others. If the parties and/or the minor child(ren) are in mental health therapy, the report may be released to their therapist. This report may be considered by the court. The report may be received in evidence upon stipulation of all interested parties and is competent evidence as to all matters contained in the report. If the report is not stipulated into evidence, the child custody evaluator must be available to testify at the request of any party. (Amended Effective 7/1/2002)

RULE 19.07

EVIDENCE CODE 730 AND CCP 2032 EVALUATIONS

If the evaluation is pursuant to E.C 730 or CCP 2032 the evaluation must be filed in the court file in which the hearing is set, and must not be confidential, unless and until applicable code sections or rules are amended to provide for confidentiality. If any party wishes for the report to be confidential or sealed they must apply for an order pursuant to statutory and case law. (Amended Effective 7/1/2002)

RULE 19.08

REQUESTS FOR CONFIDENTIALITY AND SEALING OF COURT RECORDS

In all cases, if any party requests that any portion of the testimony be confidential and not available for public inspection, notice must be given pursuant to statutory and case law to allow the Court to rule on the issue prior to taking evidence. (Amended Effective 7/1/2002)

RULE 19.09

CROSS EXAMINATION OF EVALUATORS

The cross examination of an evaluator by video conferences, telephone conferences, audio or video examination is not available. Cost-effective procedures will be developed. (Amended Effective 7/1/2002)

RULE 19.10

APPOINTMENT OF COUNSEL FOR MINORS

Nothing in this rule must prohibit a court-appointed evaluator from recommending to the court that counsel be appointed to represent the minor child at any stage of the evaluation pursuant to Family Code Sections commencing at 3150. This recommendation must be made to the presiding Family Law judicial officer with copies of the transmittal letter to each of the attorneys for the parties, or to the parties if they are self-represented. (Amended Effective 7/1/2002)

CHAPTER 20.

FAMILY MEDIATION AND INVESTIGATION SERVICES

RULE 20.00

MATTERS REGARDING MEDIATION

(Repealed Effective 7/1/2001)

RULE 20.01

MEDIATION

(Repealed Effective 7/1/2001)

RULE 20.02

SETTING A MATTER FOR MEDIATION

(Repealed Effective 7/1/2001)

RULE 20.03

MEDIATION PROCESS

(Repealed Effective 7/1/2001)

RULE 20.04

MEDIATION ORDERS

(Repealed Effective 7/1/2001)

RULE 20.05

MEDIATION PROBLEMS

(Repealed Effective 7/1/2001)

**CHAPTER 21.
CUSTODY AND VISITATION PROCEEDINGS**

RULE 21.00
CONTESTED CASES
(Repealed Effective 7/1/2001)

RULE 21.01
DEFAULT AND PROCEEDINGS PURSUANT TO FAMILY CODE SECTION 2336
(Repealed Effective 7/1/2001)

RULE 21.02
SPECIAL PROBLEMS
(Repealed Effective 7/1/2001)

**CHAPTER 22.
TRIAL IN FAMILY LAW AND ACTIONS**

RULE 22.00
AT ISSUE MEMORANDUM
(Repealed Effective 7/1/2001)

RULE 22.01
TRIAL SETTING CONFERENCE
(Repealed Effective 7/1/2001)

RULE 22.01
TRIAL PREPARATION
(Repealed Effective 7/1/2001)

RULE 22.02
CONFERENCE WITH TRIAL JUDGE
(Repealed Effective 7/1/2001)

RULE 22.03
TRIAL - DOCUMENTARY EVIDENCE
(Repealed Effective 7/1/2001)

RULE 22.04
TRIAL - GENERAL
(Repealed Effective 7/1/2001)

RULE 22.05
PERSONAL PROPERTY
(Repealed Effective 7/1/2001)

CHAPTER 23.
DEFAULT OR UNCONTESTED JUDGMENT IN FAMILY LAW ACTIONS

RULE 23.01
GENERAL POLICY
(Repealed Effective 7/1/2001)

RULE 23.02
CHILD SUPPORT
(Repealed Effective 7/1/2001)

RULE 23.03
FORMAT OF JUDGMENT
(Repealed Effective 7/1/2001)

RULE 23.04
SIGNATURE OF JUDGE
(Repealed Effective 7/1/2001)

RULE 23.05
PROPERTY
(Repealed Effective 7/1/2001)

CHAPTER 24.
CHILD AND SPOUSAL SUPPORT

RULE 24.01
MISCELLANEOUS AND TIMESHARE
(Repealed Effective 7/1/2001)

**CHAPTER 25.
COUNSEL SERVICES AND FEES**

RULE 25.00**IN A TORT CASE INVOLVING MINOR, INSANE OR INCOMPETENT PERSON**

Counsel fees in excess of the following schedule ordinarily will not be considered reasonable in tort actions under Section 372 of the Code of Civil Procedure or Sections 3302 and 3601 of the Probate Code.

- (a) Settlement More Than Two Weeks Prior to Trial
Twenty-five percent of the net amount recovered.
- (b) Disposition Within Two Weeks of, During or After Trial
Thirty-three and one-third percent of the net amount recovered.
- (c) Settlement After The Filing of Respondent's Brief on Appeal or After Affirmance
Forty percent of the net amount recovered.
- (d) Computation of Fees

In computing fees, the court will require parents claiming reimbursement for medical expenses, etc. to pay their proportionate share of the counsel fees except in cases of hardship. Reasonable costs incurred or paid by the counsel that are itemized and accompanied by appropriate vouchers, or other supporting evidence, will be allowed excepting they must not be included in the amount of the settlement or judgment on which fees are computed. Net recovery is defined as the gross amount of the cost of the settlement, less all medical-legal costs incurred but before any provision for attorney fees. If a structured settlement is involved in the compromise, the petitioner must disclose the actual cost paid for the annuity.

(e) In determining whether the case is "normal" or "typical," and if determined to be other than "normal" or "typical," the extent to which the fee allowed should be more or less than that allowed for the "normal" or "typical" case, (whether at the time of the hearing on the compromise, or prior thereto), the court must consider such matters as may be presented as bearing upon the nature of the case, including, but not limited to:

- (1) The type of case. E.g., rear-ender, intersection collision, slip and fall, public entity, etc.;
- (2) The nature of the injuries, so far as known. E.g., "soft tissue," fracture, etc.;
- (3) The complexity or potential complexity of the case, items of the number of parties involved and issues involved;
- (4) Whether or not there were or might be any unusual special defenses that were dealt with, or which might have to be dealt with;
- (5) The amount of insurance coverage that is or appears to be available;
- (6) The existence of any dispute or realistically possible dispute over insurance coverage.

(f) The court may require that counsel make a written presentation in support of his or her position that the case is not "normal" or "typical." The contents of such presentation must remain confidential, and must not be disclosed to anyone by the judge to whom the same made, except upon noticed motion, after final disposition of the case, (including any appeals). If such presentation is in writing, the judge must sign the same, indicating that he or she read it, and the same must be retained by counsel presenting it until the earliest of the following occurs:

- (1) Termination of the case with no recovery;
- (2) Distribution of the recovery to the minor, insane, or incompetent person, pursuant to court order;
- (3) Other order of court, after final termination of the case (including any appeals), upon noticed motion.

RULE 25.01**COMPROMISE OF CLAIMS**

Pursuant to Rule 241(b), California Rules of Court, in a compromise or incompetent's disputed claim, counsel must disclose his interest in the proceeding. Such disclosure must include a declaration of the attorney's relationship with the liability insurance company settling the claim and, should counsel be employed by said insurance company, a statement that no compensation will be received from any person other than said insurance company.

RULE 25.02**IN AN ACTION ON A PROMISSORY NOTE, CONTRACT PROVIDING FOR THE PAYMENT OF COUNSEL FEES AND FORECLOSURE**

The following counsel fees must be awarded under normal circumstances in an action on a promissory note, contract providing for the payment of counsel fees and foreclosure:

- (a) **Default Action on Note or Contract**
Exclusive of costs:
Any part of first \$1,000 (\$250 minimum) fee.

20 percent of next	\$4,000	(\$800 maximum).
15 percent of next	\$5,000	(\$750 maximum).
10 percent of next	\$5,000	(\$500 maximum).
5 percent of next	\$35,000	(\$1,750 maximum).
2 percent of next	\$50,000	(\$1,000 maximum).
1 percent of the amount over	\$100,000.	

In an action upon a contract providing for counsel fees, the Clerk of the Court must include in the judgment counsel fees in accordance with this schedule, not to exceed the amount prayed for.

(b) Uncontested Unlawful Detainer

For any default unlawful detainer, \$350.00. If counsel believes a higher fee is warranted, he or she must cause the matter to be calendared for a court hearing and give notice of the hearing to the defaulted party.

(c) Foreclosure of Mortgage or Trust Deed

The same amount as computed under Subdivision (a).

(d) Foreclosure of Assessment or Bond Lien Relating to a Public Improvement

The same amount as computed under Subdivision (a).

RULE 25.03

COURT APPOINTED COUNSEL AND PUBLIC DEFENSE SERVICES

(a) Determination of Attorney Compensation and Necessary Expenses of Defense

In each case in which a person has been furnished services of counsel or other defense services at public expense pursuant to an appointment by the court, upon conclusion of the proceedings, the court must make a determination of the county cost incurred for attorney compensation and necessary expenses of defense. Counsel must be prepared at that time to submit an approved form of client financial statements and itemized information as to the time devoted to the case, expenses incurred and all claims made and compensation received in connection with the case. Expenses will not be considered reasonable unless authorized by the court before they are incurred. The amount of time shown on said itemized statement must reflect no more than the actual "billable" time that an attorney ethically would bill to a member of the public who that attorney might represent in private practice. The time itemized must not include attorney's traveling time or expenses or research or preparation time which would not be required of an attorney reasonably experienced in the practice of criminal law. Said itemized statement must be submitted to the court by counsel in the form of a declaration signed under penalty of perjury.

(b) Reimbursement Order

In the event any person may be required by law to reimburse the county for compensation of counsel or costs of defense services, the court, after determining the amount thereof must make a determination of the present ability of such person to pay all or a portion of such amount and must make such reasonable order for payment as is authorized by law. This determination and the determinations required by paragraph (a) above must be made only after the court has held a hearing. All persons required by law to reimburse the county for compensation of private counsel or costs of defense services must be entitled to reasonable notice of the hearing, and may appear thereat, with counsel, and participate therein, including the presentation of evidence and the cross-examination of witnesses.

(c) Collection

The court, in its discretion, may delegate to the appropriate county officer the authority to collect such reimbursement and to establish and modify arrangements for installment payments. In addition, to the extent authorized by law, it may delegate to such officer authority to reduce or cancel unpaid repayment obligations upon a finding by the officer that the person obligated no longer has the ability to pay the amount ordered.

(d) Action on Claim

Within a reasonable period of time from the date of filing of counsel's request for a fee order and itemized declaration in support thereof, the court must determine whether or not said request and declaration conform to the contents of this rule and any corresponding court policy. If the request and declaration conform to this rule and any corresponding court policy, an order must be made and delivered forthwith to the Auditor of the County of San Luis Obispo for payment out of the General Fund of the County of San Luis Obispo as set forth in Penal Code Section 987.2(a). In the event the court determines that the request and declaration are not or may not be in conformance with this rule and any corresponding court policy, the court may reduce the claim as it deems appropriate or may notify counsel that said request for attorney's fees is denied pending a hearing to be scheduled on the law and motion calendar of the court. Any such hearing must take into account the schedules of the court and counsel. Any time spent on any such hearing must not be a charge against the County of San Luis Obispo or the court. At the conclusion of any such

hearing, the court must make a final order as to the amount of attorney's fees to which said counsel is entitled pursuant to this rule and any corresponding court policy.

(e) Recognizing the Constitutional requirement to provide competent and qualified counsel, and subject to the determination by the trial court to a reasonable fee for services pursuant to Penal Code Sections 987.2 and 987.3, counsel must be appointed and compensated in accordance with such guidelines as the court may from time to time set forth in its policies.

RULE 25.04

UNUSUAL CASES WARRANTING INCREASED FEES

In the event that counsel has provided extraordinary services in the prosecution of litigation such that the schedules called for in this rule would not provide a fair and reasonable compensation on a per hour or per diem basis, he or she may move the court, after written noticed motion to all parties, including the client(s) of the attorney making the motion, for an increased fee allowance. Counsel must submit with the motion an itemized sworn statement of services provided together with the dates and times such services were rendered.

CHAPTER 26.

RULES FOR ARBITRATION

RULE 26.00

INTRODUCTION

(a) The uniform system of arbitration in the San Luis Obispo County Superior Court hereby provides that the following actions be arbitrated:

(1) Upon stipulation, any action regardless of the amount in controversy.

(2) Upon filing of an election by the plaintiff, any action where the plaintiff agrees that the arbitration award must not exceed \$50,000.

(3) All actions where the amount in controversy does not exceed \$50,000 to any plaintiff.

(b) (Deleted Effective 7/1/2001)

(c) **Exempt Actions**

(1) Actions that include meritorious prayers for equitable relief.

(2) Class actions.

(3) Small claims actions.

(4) Unlawful detainer proceeding where possession is in issue.

(5) Any action found by the court to be not amenable to arbitration on the ground that arbitration would not reduce the probable time and expense necessary to resolve the litigation. (Added eff. 7/1/1989)

(d) Any action where the amount in controversy does not exceed \$25,000. (Amended Effective 7/1/2001)

RULE 26.01

SANCTIONS FOR NON-PARTICIPATION

All parties to an action, together with their attorneys, if any, must attend and participate in good faith in court ordered mandatory arbitration proceedings. If a party fails to attend and participate in good faith in a court ordered mandatory arbitration proceeding and thereafter that party requests a trial pursuant to Rule 1616, an order to show cause must issue to such party. At the hearing, the court must find whether the non-participation constituted bad faith, frivolity, disobedience to a lawful order or was intended solely for the purpose of causing unnecessary delay. A belief, even held in good faith, that the arbitration will not result in a final disposition of the litigation is not a justification for non-participation and will not negate an assertion of bad faith non-participation.

RULE 26.02

COMPENSATION OF ARBITRATOR

(a) The parties to a court ordered arbitration in civil matters must compensate the arbitrator selected in the amount of \$250.00 for his or her services as an arbitrator. The cost must be born pro rata by the parties. Any party proceeding in forma pauperis must be exempt from paying his or her pro-rata share, and the arbitrator's compensation must be abated by that amount.

(b) Arbitrators of controversies where the amount in controversy does not exceed \$25,000 must be paid \$200.00 by the court. (Amended Effective 7/1/2001)

RULE 26.03

SELECTION OF ARBITRATOR

In any case which the court refers to mandatory non-binding arbitration, counsel must select an arbitrator on the date of referral. ~~The Administrator of Civil Operations~~ *Arbitration Coordinator* must provide counsel with a list of proposed arbitrators.

RULE 26.04**RULES OF ARBITRATION**

All civil actions submitted for arbitration must be arbitrated pursuant to the California Code of Civil Procedure and California Rules of Court.

CHAPTER 27.
SAN LUIS OBISPO COUNTY TRIAL RULES

RULE 27.00**APPLICABILITY**

These rules must supplement the California Rules of Court, and must apply to all trials conducted in San Luis Obispo County Superior Court.

RULE 27.01**JURY INSTRUCTIONS****(a) Proposed Pattern of Jury Instructions**

In jury trials the instruction forms contained in the most recent editions of "California Jury Instructions-Civil" (BAJI) and "California Jury Instructions-Criminal" (CALJIC) should be used when applicable. Due consideration will be given to proposed instructions drafted by attorneys as well as the BAJI and CALJIC forms.

Not later than one day after the jury is selected, counsel must meet and confer, face-to-face unless excused by the trial judge. They must separate the proposed jury instructions so as to eliminate redundancy. The proposed instructions must then be separated into two groups. The first group of instructions must consist of those that all parties agree can be given by the court as drafted. The second must consist of those proposed instructions about which counsel disagree and wish to have a court ruling before submission to the jury.

The parties or their counsel must then meet and confer with the court in chambers to discuss the proposed instructions. The court may give indicated rulings which may subsequently be put on the record.

The court will assign responsibility for preparing "clean" copies of the instructions to be given by the court for delivery to the jury in the jury room. Those "clean" instructions must not indicate which party submitted the proposed instruction nor must they replicate the source of the text, the citation of authority, if any, or the judge's signature.

(b) Instructions to be Completed

It must be the duty and responsibility of counsel proposing a pattern instruction to complete all blanks contained in it necessary for the purpose of the instruction. Failure to do so must be deemed by the court as sufficient cause to refuse the proposed instruction.

(c) Additional Instructions Drafted by Counsel

Counsel may draft and submit additional proposed instructions. Each must be numbered in consecutive order and indicate the party upon whose behalf it is requested. Failure to cite on any such instruction the authorities relied upon to support giving it must be deemed by the court as sufficient cause to refuse the proposed instruction.

(d) Method of Filing Proposed Instructions with Trial Judge

In all jury trials, counsel must present to the court a document setting forth in the usual manner the title of the court, title and number of the action, and title of the document, namely, "Instructions requested by ____." A copy of the document must be served upon each of the other counsel in the case. The document must list by number the BAJI and/or CALJIC instructions requested by counsel and counsel must attach to the original the (1) instructions so requested that are in print and available; and if such instructions are modified, by the completion of blanks, the deletion of bracketed material, or in any other manner made complete; (2) if the instructions so requested are not locally available, it will be counsel's responsibility to type such instructions; and (3) the additional instructions, if any, as provided in paragraph (c) above.

~~(e) Time for Delivery of Proposed Instructions to Court~~

~~At the time a civil case is assigned out of master calendar for trial, counsel for the respective parties must exchange with opposing counsel and must deliver to the clerk in the master calendar department the proposed jury instructions prepared as provided in Rule 27.01(d). No file must be forwarded to a trial department for trial without the appropriate proposed jury instructions being included. (Repealed Eff. 7/1/2002)~~

~~(e) Time for Delivery of Proposed Instructions to Court~~

~~Jury instructions requested by a party must be filed two court days before the date scheduled for trial. See Rule 27.02.~~

RULE 27.02**PRETRIAL PROCEDURES AND REQUIREMENTS**

(a) The following documents and things must be filed 2 court days before the date scheduled for trial:

- (1) A brief statement of the case and the issues to be determined by trial;
- (2) The estimated time required for the trial;
- (3) Stipulated facts or admissions of the parties;
- (4) Any special voir dire questions or requests;
- (5) A witness list;
- (6) Motions in limine;
- (7) A statement of any unusual evidentiary or legal issues; and
- (8) Jury instructions and verdict forms

(b) The court may require the parties to attend a Trial Management Conference to discuss voir dire, the timing of the trial, presentation of evidence, exhibits, and witnesses or parties with special needs. (Amended Effective 7/1/2001)

RULE 27.03

MOTIONS IN LIMINE, CIVIL JURY TRIALS

In civil jury trials, counsel must make any In Limine motions as follows:

(1) The motion to be filed and served by FAX, express mail or personal service, not later than two court days before the first calendar call of the case. If the case goes off calendar, subject to a new At-issue Memorandum, the motion must be filed anew, not later than two court days before the next calendar call. (Eff. 7/1/1999)

(2) Motion must include:

- (a) Counsel's best estimate of the time that will be required to properly hear and dispose of the motion(s).
- (b) The general subject(s) of the motion(s) together with points and/or authorities.
- (c) A proposed order.

RULE 27.04

RESETTING OF LONG CIVIL JURY TRIALS CAUSE TO SUMMARY JURY TRIALS

(a) If, in the opinion of the judge presiding, a civil jury trial scheduled for trial will require ten (10) or more days of trial it may be assigned for a "summary jury trial".

(b) The "summary jury trial" format must consist of the following:

(1) Agreed Statement

An agreed statement will be compiled by the parties to the action which will set forth the identity and nature of the parties, the essential facts of the case and a brief outline of the procedures to be used in the "summary jury trial."

(2) Jury Selection

The judge must be solely responsible for jury voir dire. A jury of six (6) persons will be selected from a panel of twelve (12). The judge will concentrate on issues of cause only and no peremptory challenges will be allowed. After the jury is selected, the agreed statement will be read to the six members of the jury. This stage should last no longer than thirty (30) minutes.

(3) Required Attendees

The "summary jury trial" must be attended by all plaintiffs and cross complainants, their respective counsel, the defendants and cross-defendants, or if they are insured, adjusters representing their respective insurers who have responsibility for the case and plenary monetary authority to settle the case and their respective counsel. To the extent not inconsistent with this provision, the rules of Chapter 9 of these rules must apply to "summary jury trials" with regard to attendance and sanctions.

(4) Presentation of Evidence

Plaintiff must be allowed one hour within which to present evidence to the jury. This evidence may include reading from deposition transcripts, presentation of exhibits or graphic representations and statements by counsel constituting factual allegations. Counsel must refrain from arguing the case at this point and must confine himself or herself to presenting what he or she believes to be the facts of the case through anticipated testimony of witnesses.

The defendant must be allowed one hour to present his or her evidence on behalf of his or her client. If there are more than two parties, the trial judge may divide the time equitably to fit within the time available (approximately 2-1/2 hours). All counsel must refrain from making any objections during the presentation of any party's case. The judge must be vested with the authority to make objections on the grounds of relevancy and argument only. All other objections such as lack of foundation, hearsay, etc. will not be made during the presentation of evidence.

(5) Argument of Counsel

Plaintiff must open and close. The trial judge must assign the time limitations on argument (approximately 20 minutes per side).

(6) Jury Instructions

A limited number of concise jury instructions will be agreed upon before the trial and will be presented to the judge. They should take no longer than 10 minutes to read to the jury and the parties must provide clean copies to be used by the jurors.

(7)Deliberation of the Jury

The jury must be instructed to decide the issues presented to them. The issues must be set forth in a special verdict form. Five of the six jurors must agree for there to be a verdict. They must have a time limit of three (3) hours or 4:30 p.m., whichever is sooner. If they have not reached a verdict by that time, they will be called back into the courtroom so that they can announce the status of their deliberations and counsel will be allowed to ask them questions. If they have reached a verdict, the verdict will be announced and counsel will again be allowed to ask questions of the panel.

(8) The trial must be conducted by a judge pro-tem, agreed upon by the parties or assigned by the presiding judge. Costs of the judge pro-tem, jury fees and lunch for the jury panel *and costs for the court reporter* will be divided among the parties pro rata. (Amended Effective 7/1/2001)

RULE 27.05

VOLUNTARY SUMMARY JURY TRIAL

At any time after the mandatory settlement conference has been held the parties may stipulate to conduct a "summary jury trial." Upon such stipulation being filed with the court, the court administrator will co-ordinate the conduct of the proceeding utilizing court resources as they may be available.

**CHAPTER 28.
COURT INTERPRETING SERVICES**

RULE 28.00

INTERPRETERS

(a) Establishment of Competency

Any interpreter whose services are used in the court will be required to be certificated pursuant to the provisions of Government Code section 68565 unless in a particular case the court should waive this requirement. When the requirement is waived, the competency of the interpreter must be satisfactorily established upon examination or such other suitable means as must be determined by the court.

(b) List of Court Approved Interpreters

The Clerk of the Court must maintain for public examination a list of court approved interpreters and their particular languages.

RULE 28.01

COMPENSATION OF COURT-APPOINTED INTERPRETERS

Court appointed interpreters must be compensated according to the schedule set forth herein. From time to time the judges of the Superior Court may adopt amendments to the compensation schedule which amendments must supersede the following schedule.

Multiple Translations/incidents: \$35.00 per person, up to a maximum of \$140.00 per day.

Single Extended Translation/Incident: \$70.00 per half day up to a maximum of \$140.00 per full day.

In no event must the fees on any given day exceed\$140.00.

In no event must the fees for any given week exceed \$700.00.

The daily and weekly maximum fees must apply to a combination of services in the Superior Court. (Eff. 7/1/1999)

**CHAPTER 29.
FAX FILING**

RULE 29.01

AUTHORITY

The rules in this division are adopted under Code of Civil Procedure Section 1012.5 and the authority granted to the local court by California Rules of Court Rule 2002(b). (Eff. 1/1/1998)

RULE 29.02

APPLICABILITY

These rules apply to civil (except Small Claims), probate, and family law proceedings in the Superior Court of California, County of San Luis Obispo. (Eff. 7/1/1999)

RULE 29.03

DEFINITIONS

As used in this division, unless the context requires otherwise:

- (1) "These rules" means the rules in this division.
- (2) "A facsimile transmission" means the transmission of a copy of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.
- (3) "A facsimile machine" means a machine that can send a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union (CCITT), in regular resolution. A facsimile machine used to send documents to a fax filing agency must send at an initial transmission speed of no less than 4,800 baud and be able to produce a transmission record.
- (4) "Facsimile filing" or "filing by fax" means the facsimile transmission of a document to a fax filing agency for filing with the court.
- (5) "A transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of errors, if any, in transmission.
- (6) "Fax" is an abbreviation for "facsimile" and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.
- (7) "Fax filing agency" means an entity that receives documents by fax for processing and filing with the court. (Eff. 7/1/1992)

RULE 29.04

COMPLIANCE WITH RULES 201 AND 501 OF CALIFORNIA RULES OF COURT

The document placed in the transmitting fax machine must comply with Rules 201 or 501 of the California Rules of Court and any applicable local rules on the form or format of papers. A document or exhibit which exceeds 8-1/2 x 11 inches must be reduced to 8-1/2 x 11 inches before it is transmitted. (Eff. 7/1/1992)

RULE 29.05

SIGNATURES

(a) Signed Document

A party who wishes to file a signed document by fax must either (1) fax a copy of the original signed document or (2) fax a copy of the document without the signature but with the notation "/s/" followed by the name of the signing person where the signature appears in the original signed document

(b) Possession of Original Document

A party who files a signed document by fax using either method in subdivision (a) represents that the original physically signed document is in his/her possession or control.

(c) Facsimile Signature Constitutes Original Signature

Notwithstanding any provision of law to the contrary, including Sections 255 and 260 of the Evidence Code, a signature produced by facsimile transmission is an original.

(d) Demand for Original; Waiver

Within 15 days after service of a signed facsimile filing, any other party may serve a demand for production of the original physically signed document. The demand must be served on all other parties but must not be filed with the court. Failure to serve a demand is a waiver of the right to demand production of the physically signed original.

(e) Examination of Original

If a demand for production of the original physically signed document is made, the parties must arrange a meeting at which the original physically signed document can be examined.

(f) Order to Produce Original

In the event that the original document is not produced after a timely request therefor, the party may file a noticed motion requesting the court to order the filer of the facsimile produced document to file or produce the original signed document. (Eff. 7/1/1992)

RULE 29.06

ORIGINAL EXHIBITS

Each exhibit to a facsimile produced document which cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the court otherwise orders, the missing exhibit must be filed with the court, as a separate document, not later than five (5) court days following the filing of the facsimile

document. Failure to file the missing exhibits as required by this paragraph may result in the court striking the document and/or exhibit. (Eff. 7/1/1992)

RULE 29.07**FAX FILING AGENCY****(a) Approved Fax Filing Agencies**

The clerk of the court must maintain and provide to interested parties without charge, a list of approved fax filing agencies. Entities or individuals which are licensed shorthand reporters or registered process servers may apply to the court to become approved fax filing agencies, if they meet the following criteria.

(1) The proposed fax filing agency must have available at least one fax machine or computer which is capable of producing facsimile documents on plain number 18# bond (or heavier) paper by laser printer or better quality technique.

(2) The proposed fax filing agency must attempt to have its facsimile machine available on a 24-hour basis, save for reasonable and normal maintenance times.

(3) The proposed fax filing agency must undertake to comply with all rules in this division.

(b) Transmission of Document for Filing

A party may transmit a document by fax to a fax filing agency for filing with the court. The fax filing agency acts as the agent of the filing party and not as an agent of the court.

(c) Duties of Fax Filing Agency

A fax filing agency that receives documents for filing must:

(1) Prepare the document so that it complies with 201 or 501 and any other requirements for filing with the court;

(2) Place the words "filed by fax by" followed by the name of the agency at the bottom of the last page of the document and include thereafter a certification signed by the person who received the facsimile transmission which certifies under penalty of perjury that the document to be filed is the full, complete and unaltered facsimile produced document received;

(3) Take the document to the court;

(4) File the document with the court; and

(5) Pay any applicable filing fee.

(d) Requirement of Advance Arrangements

A fax filing agency must not be required to accept papers for filing unless appropriate arrangements for payment of filing fees and service charges have been made by the transmitting party before the papers are transmitted to the fax filing agency.

(e) Confidentiality

A fax filing agency must keep all documents transmitted to it confidential except as provided in these rules.

(f) Certification by Fax Filing Agency

By filing a document with the court, a fax filing agency certifies that it has complied with these rules and that the document filed is the complete and unaltered facsimile produced document received by that agency. (Eff. 7/1/1992)

RULE 29.08**FACSIMILE NOTATION**

All facsimile produced documents to be filed with the court must bear the notation "facsimile document" directly above the case number on the first page of the document only. (Eff. 7/1/1992)

RULE 29.09**FAX QUALITY; PLAIN PAPER**

In order to be filed with the court, all facsimile produced documents must be produced on plain number 18# bond (or heavier) paper by laser printer or better quality technique, and in terms of legibility, quality of paper and permanence must be of equal or better quality than non-facsimile produced documents. (Eff. 7/1/1992)

RULE 29.10**NO FAX TRANSMITTAL TO COURT**

Facsimile produced documents may not be transmitted for filing directly to any facsimile machine owned or operated by the court or clerk's office. In order to be filed with the court, all facsimile produced documents must be presented for filing at the filing window or by mail. All required fees must be paid at the time of filing. (Eff. 7/1/1992)

RULE 29.11**DOCUMENTS NOT TO BE FILED BY FAX**

The following documents will not be accepted for fax filing: original wills and codicils, all types of proposed letters to be issued (i.e., letters of guardianship, conservatorship, and administration), and all bonds and undertakings. (Eff. 7/1/1992)

**CHAPTER 30.
PAYMENT TO THE COURT**

RULE 30.00

PAYMENT IN COINS

No officer of the court who collects money as described in Government Code section 24383 must be required to accept payment in coin. (Eff. 7/1/1999)

RULE 30.01

CHECK CASHING

(a) Acceptance

A personal check, bank cashier's check or draft, express or post office money order, or traveler's check, offered in payment of any fee, fine or bail deposit may be accepted by the court if the following conditions are met:

- (1) If a personal check is drawn on a banking institution located in California or if a bank cashier's check or money order is drawn on a banking institution located in the United States;
- (2) The amount is the exact amount of the fee, fine or bail;
- (3) The date on the check is not over two months previous to the date presented nor is it later than the date presented;
- (4) The original payee is "Clerk of the Court" or other similar designee (no two-party checks);
- (5) The numeric figures (bank courtesy figures) agree with the amount written in words; and
- (6) The sum is in U.S. currency.

(b) Refusal

Any check or money order which appears irregular on its face may be returned. Personal checks from persons known to have previously tendered worthless or "Not Sufficient Funds" checks to the Clerk or other persons may be refused. (Eff. 7/1/1999)
